IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 8343 of 2006(R)

PETITIONER:

A. ABOOBACKER, S/O. SAITHALI,
ALALUKKAL HOUSE, (P.O) ARAKKAPARAMBA,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:
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1. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
CHERPLASSERY, PALAKKAD DISTRICT.

3. THE MANAGER,
S.V.A.U.P. SCHOOL, KULIKKILIYAD, (P.O) KOTTAPURAM,
PIN-679 513, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/06 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.8343 OF 2006

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY R3**
EXT.P2	**TRUE COPY OF THE APPOINTMENT ORDER ISSUED BY R3**
EXT.P3	**TRUE COPY OF THE ORDER DATED 5-12-03 ISSUED BY R2.**
EXT.P4	**TRUE COPY OF THE ORDER ISSUED BY R1 TO R2**
EXT.P5	**TRUE COPY OF THE G.O.(P)NO.169/04/G.EDN. DTD. 15-6-04**
EXT.P6	**TRUE COPY OF THE ORDER NO.D.DIS.E/4410(1)/04 ISSUED BY R2**
EXT.P7	**TRUE COPY OF THE ORDER DTD. 18-1-05 ISSUED BY R2.**
EXT.P8	**TRUE COPY OF THE ORDER DATED 16-2-05 ISSUED BY R2**
EXT.P9	**TRUE COPY OF THE JUDGMENT IN W.P..CNO.7599/05 OF THIS COURT.**
EXTP10	**TRUE COPY OF THE APPOINTMENT ORDER DATED 15-7-05 ISSUED BY THE MANAGER, SVAUP SCHOOL, KULIKKILIYAD**
EXT.P11	**TRUE COPY OF THE LETTER NO. 6979/J2/99/G.EDN. DTD. 24-3-99**
EXT.P12	**TRUE COPY OF THE ORDER NO.K.DIS/69202/05/G1/DPI DTD. 2-11-05 ISSUED BY R1.**

RESPONDENT'S EXHIBITS

EXT.R2(A)	**TRUE COPY OF THE LETTER ADDRESSED TO GOVT. BY THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD.**
EXT.R2(B)	**TRUE COPY OF THE LETTER ADDRESSED TO R2.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No. 8343 OF 2006

Dated this the 6th day of December,2006.

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner was appointed as Assistant Teacher from 26-08-2000 to 4-03-2002 against the leave vacancy of Shri.K.Abdulkarim who was on leave from 5-3-92 to 4-3-2002 to take up employment abroad. Thereafter, petitioner had approached the Government and as per the order of the Government Ext.P3 came to be passed. Shri.Abdulkarim has been sanctioned further leave from 5-3-2002 to 4-3-2007. Petitioner was again appointed as Leave Substitute from 05-03-02 to 04-03-07 in the leave vacancy created by the extension of leave granted to Shri.K.Abdulkarim.

2. Petitioner relies on Exts.P6 to P8 staff fixation orders for the years 2002-03, 2003-04 and 2004-05. According to him as per the same petitioner has every right to be appointed, no doubt applying 1:40 ratio. But approval of the petitioner was not granted. Petitioner refers to Ext.P9 judgment. Even though this court has noted that petitioner has a fairly strong case to get approval in the light of the approval granted to Shri. Hassankuty and Shri.Abdulkhader, the matter was remitted to the DPI. The DPI has passed the impugned order-

Ext.P12. In Ext.P12 it is stated that the protection is just a benefit given to the teacher, not to the post. The authorities take the view that the duration of the post was up to 4-3-02 and and it was exhausted on 04-03-07 as the post against which petitioner claims namely from 05-03-02 was abolished from the day before his appointment.

3. Learned counsel for the petitioner would submit that the decision is clearly insupportable. He took me through the staff fixation order - Exts.P6 to P8. He would submit that as long as Exts.P6 to P8 stand and as they are not cancelled, the decision of the DPI cannot be supported. Petitioner has been appointed against the post which was sanctioned as per the staff fixation order, no doubt applying 1:40 ratio.

4. Learned Government Pleader would support the order and submits that even the original order passed in favour of the petitioner namely Ext.P13, no doubt at the instance of the Government was essentially a mistake as the petitioner was not in service and was not entitled to the grant of benefit of 1:40 ratio.

5. I note that there is no reference in Ext.P12 to the impact of Exts.P6 to P8 order of staff fixation for the years 2002-03, 2003-04 and 2004-05. I feel that the said orders are most relevant and even according to the petitioner it is the most crucial element in the decision as to whether the appointment of the petitioner should be approved.

But, this is not seen referred to in the impugned order. In such circumstances, I feel that the matter has to be re-considered by the DPI. Accordingly Ext.P12 is quashed and a decision will be taken afresh by the first respondent in accordance with law after hearing the petitioner within a period of two months from the date of receipt of a copy of this judgment.

Writ petition is disposed of in the above terms.

K.M.JOSEPH.
JUDGE.

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